UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

RICHARD LIVINGSTON,	
Plaintiff,	
v.)	Civil Action No. 05-CV-11349-RCL
MBTA EMPLOYEES CREDIT UNION,	
Defendant.)	

DEFENDANT MBTA EMPLOYEES CREDIT UNION'S MOTION TO STRIKE PORTIONS OF THE AFFIDAVIT OF RICHARD LIVINGSTON

Pursuant to Fed. R. Civ. P. 56(e), Defendant MBTA Employees Credit Union (the "Credit Union") hereby hereby moves to strike certain portions of the Affidavit of Plaintiff, Pro Se, Richard Livingston (sic) Opposition to Defendants (sic), MBTA Employees Credit Union's Motion for Summary Judgment (the "Livingston Affidavit"). Specifically, the Credit Union seeks to strike Exhibits 6, 8, 9, 10, 11, 12, 13, 14, 16, 18, 20, 21, 22, and 23 from the Livingston Affidavit. As grounds for this Motion, the Credit Union states that these Exhibits should be stricken because they: (1) have not been properly authenticated; (2) contain facts that are irrelevant, inadmissible hearsay and/or inadmissible evidence; and (3) Livingston is not competent to testify to the matters stated therein, as required by Mass. R. Civ. P. 56(e).

As further grounds for this Motion, the Credit Union relies upon the Memorandum in Support of Defendant MBTA Employees Credit Union's Motion to Strike Portions of the Affidavit of Richard Livingston, which is filed herewith.

WHEREFORE, the Credit Union respectfully request that this Honorable Court enter an Order striking Exhibits 6, 8, 9, 10, 11, 12, 13, 14, 16, 18, 20, 21, 22, and 23 from the Affidavit of Plaintiff, Pro Se, Richard Livingston (sic) Opposition to Defendants (sic), MBTA Employees Credit Union's Motion for Summary Judgment.

LR 7.1(A)(2) CERTIFICATION OF COUNSEL

Pursuant to LR 7.1(A)(2), counsel certifies that he conferred with the *pro se* plaintiff and attempted in good faith to resolve or narrow the issue presented by this motion.

MBTA EMPLOYEES CREDIT UNION,

By its attorneys,

/s/ Peter C. Netburn

Peter C. Netburn, BBO No. 546935 Eric C. Hipp, BBO No. 642658 HERMES, NETBURN, O'CONNOR & SPEARING, P.C. 265 Franklin Street, Seventh Floor Boston, MA 02110-3113 (617) 728-0050 – Tel. (617) 728-0052 – Fax

Dated: August 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 17, 2006.

/s/ Eric C. Hipp Eric C. Hipp

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